

SUPREME COURT of the
UNITED STATES

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JUN 14 1979

OFFICE OF THE CLERK
SUPREME COURT, U.S.

78-6840

ROGER H. CORLEY
Petitioner

. v .

UNITED STATES of AMERICA,
Respondent

PETITION for a WRIT of
CERTIORARI to the SUPREME
COURT of the UNITED STATES

ROGER H. CORLEY, PRO-SE
40945
P.O. BOX 1000
LEWISBURG PA. 17837

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UNITED STATES

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ROGER H. CORLEY
Petitioner

78-6840

PET. NO. _____

. V .

UNITED STATES of AMERICA

MEMORANDUM IN SUPPORT OF THE PETITION
FOR A WRIT OF CERTIORARI

- A. Petitioner by pro-se, comes to this Honorable Court, as to the procedure conducted in the District of Columbia Court of Appeals... Appeal Docket Number 11443-76.
- B. The Petitioner prays that this Honorable Court, will consider the action of Court Appointed Appellate Counsel Joel DuBoff, and the Personnel of the D.C. Court of Appeals.
- The Petitioner has no excess to a Xerox Machine.
- D. The said issue before the D.C. Court of Appeals was ineffective assistance of counsel, by trial counsel Robert Case Liotta, 44575-75.

RESPECTFULLY SUBMITTED

Roger H. Corley
ROGER H. CORLEY, PRO-SE

SUPREME COURT of the
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. V .

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78-6840

MOTION FOR LEAVE TO PROCEED IN FORMA
PAUPERIS, PURSUANT TO TITLE 28 U.S.C.
SECTION 1915 and RULE 53 of the
SUPREME COURT'S RULES

The Petitioner comes to this Honorable Supreme Court, of the United States, by pro-se, and ask leave to file the accompanying Petition for a Writ of Certiorari, without payment of cost and leave to proceed in Forma Pauperis. The Petitioner Affidavit in support of the application is Annexed hereto.

RESPECTFULLY SUBMITTED

Roger H. Corley
ROGER H. CORLEY, pro-se

SUPREME COURT of the
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. V .

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PET. NO. _____

78-6840

AFFIDAVIT TO ACCOMPANY MOTION TO PROCEED
IN FORMA PAUPERIS

I, Roger H. Corley, Being first duly sworn, depose and say that I am the Petitioner in the above - entitled Case; that in support of my Application to proceed without being required to pre-pay fee; cost or to give security therefore, that I believe I am entitled to redress and that the nature of my action is briefly stated as follow.

I further have truthfully set-forth below information of my ability to pay the cost of defending the case against me.

1. Are you presently Employed? NO
2. How much cash do you have \$4.60 Canteen Account 4.60
Dr. Bel
(AUTHORIZE AUTHORITY, LEWISBURG PENITENTIARY)
3. Do you have any Banking, Saving Account, Stock, Automobiles, Real Estates or other Valubles Property? NONE
4. Name the people depending on you for support. NONE

I understand that a False Statement or Answer to any Question in this Affidavit will subject me to a Penalties for Perjury.

SEE PUBLIC LAW 94-550 (a)

TITLE 28 U.S.C. 1746

RESPECTFULLY SUBMITTED

Roger H. Corley 6-12-79
ROGER H. CORLEY, PRO-SE

40945
P.O. BOX 1000
Lewisburg Pa, 17837

IN THE
SUPREME COURT of the UNITED STATES

RECEIVED

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OFFICE OF THE CLERK
SUPREME COURT, U.S.

ROGER H. CORLEY
40945
P.O. BOX 1000
LEWISBURG PA. 17837

. V .

UNITED STATES of AMERICA

PET. NO. _____

78-6840

PETITION for a WRIT of CERTIORI

Comes now the Petitioner Roger H. Corley, by pro-se Respectfully and in Goodfaith, moves this Honorable United States Supreme Court, that the Petitioner Roger H. Corley, be granted a Writ of Certiorari, due to the District of Columbia Court of Appeals and Personnel and court appointed Appellate Counsel has fail to carry out its Constitutional Duty as prescribed in ANDERS V. CALIFORNIA, 368 U.S. 738, 18 Led. 2d. 493 (1967) in Appeal Number 11443-76, and due to Appellate Counsel, has fail to follow the direction setforth in the A.B.A. Standard and Code of Professional Responibility. The Petitioner do to being indigent has been deprive of effective assistance of counsel on Direct Appeal. The action by the D.C. Court of Appeals and Personnel and the Appellate Counsel is contary to the 5th, 6th Amendment of the United States Constitution of America and direction setforth in ANDERS V. CALIFORNIA 368 U.S. 738, 18 Led. 2d. 493 (1967). And due to the Appellate Counsel fail to inform the Petitioner of his right to Petition for a Writ of Certiorari. SCHIENER V. UNITED STATES, 404 U.S. 67, 30 Led. 2d. 222 (1971), DOHERTY V. UNITED STATES, 404 U.S. 28, 30 Led. 2d. 149 (1971) and HERBERT G. WILKINS, SR. V. UNITED STATES, SUPREME COURT NUMBER 78-5885.

JURISDICTION

Jurisdiction of this Honorable Supreme Court of the United States, is invoked pursuant to Title 28 U.S.C. 1257 (3).

OPINION BELOW

October 5, 1976, the Superior Court, (D.C. Cir.) Trial Court, denied the Petitioner motion to withdraw (his) Plea, due to ineffective assistance of court, in Criminal Number 44575-75.

October 13, 1976, a Notice of Appeal was file in the Superior Court (D.C. Cir.), due to the denial of the said motion by the trial court.

1/ cont.....

October 19, 1976, the Notice of Appeal was docket in the D.C. Court of Appeals, Docket Number 11443-76.

December 21, 1977, the D.C. Court of Appeal, " Affirmed Case Number" .. 11443-76, Without an Opinion..see EXHIBITION (A) Attach

The record will show that the Petitioner without being informed of (his) right to Petition for a Writ of Certiorari, on March 30, 1977, by pro-se file an En Banc Motion in the D.C. Court of Appeals.

It appears that the Petitioner's En Banc Motion was denied on July 8, 1978, it was not until April 2, 1979, thur documents sent to Petitioner from the D.C. Court of Appeals, Clerk's Office, was the Petitioner notified that the rehearing En Banc Motion was denied. Further Appellate Counsel to this date has never commicated with the Petitioner by any means... nor did Appellate Counsel, inform the Petitioner of his right to Petitione for a Writ of Certiorari.....
SCHIENER V. U.S. 404 U.S. 67 and DOHERTY V. U.S. 404 U.S. 28. (1971) .
see EXHIBITION (B) Attach..

IN SUPPORT OF THE PETITION FOR A WRIT OF CERTIORARI
PETITIONER STATES THE FOLLOWING FACT OF RECORDS

The record will show on October 13, 1976, a Notice of Appeal; was file in the Superior Court (D.C. Cir.), Criminal Number 44575-75, due to the trial court denyed the Petitioner's Motion to Withdraw his Plea, due to ineffective assistance of counsel, of the court appointed trial counsel Robert Case Liotta... Criminal Number 44575-75.

The record will show that on October 19, 1976, the notice of Appeal, was docket in the D.C. Court of Appeals, Appeal Number 11443-76, Attorney Francis S Smith, was appointed by the D.C. Court of Appeals, as the Petitioner Appellate Counsel.

Thereafter from October 19, 1976 thur April 21, 1977, " No " brief wa filed, a periord of six (6) monthh had passed.

The record will show that on April 13, 1977, appellate counsel Smith, file a motion in the D.C. Court of Appeals, seeking to withdraw as the Petitioner Appellate Counsel, due to Appellate Counsel Smith, had been appointed by the Superior Court (D.C. Cir.) to represent a defendant in the Hanafi Muslin " Kidnip Case "

2/ Cont.....

Before Appellate Counsel Francis S. Smith, withdrew from the Petitioners case, Appellate Counsel Smith, informed the Petitioner that through counsel investigation, Counsel found additional issues to bring to the D.C. Court of Appeals " Attention " on Direct Appeal, insupport of the Petitioner claims of ineffective assistance of counsel by trial counsel Robert Case Liotta, these issue was in Specific:

- A. The Petitiotner was deprive of his rights both Federal...Public Law 91-538, 84 STAT 1397, Section 2, TITLE 18 U.S.C.A. App. (Supp. 1975) and under the D.C. Code TITLE 24-701, Actile 4 Section 4 (c) and 4 (e).
- B. Petitioner was deprive of effective assistance of counsel, where the court appointed trial counsel Liotta, " willfully withheld " from the Petitioner that the trial Court, had... granted the Petitioner " FUND " to obtain a Independent Handwriting Expert, in aid of a defense.
- C. Trial Counsel, fail to protect the Petitioner rights, where the Petitioner was never informed of his right to a trial on the Bail Reform Act Indictment nor Right to have a " Arraignment to the Indictment.
- D. That the issue of mentally Incompetent at the time of trial and sentence due to reaction from a gun shot wound to the head and Hypetention.
- E. That the trial court error in that the court fail to provide Petitioner a Substantial Competency Examination, where the Pettitioner records before the court show that the Petitioner had a (Gun Shot Head Injury) and suffer from Hypetention.
- F. That the trial court committed " Reversible Error ", where the trial court fail to provide the Court Order " Full Battery of PSYCHOLGIAL TEST " where the trial court on the court own motion order a continuance for these test prior to sentence.
- G. That the trial court, committed " Reversible Error " where the trial court fail to follow the direction setforth by Rule 11, Superior Court Criminil Rules.
- H. That the trial court committed " Reversible Error " where the trial court order the Probation Department to " Verify " the information in the pre- sentence report, and the Probation Department fail to carry out the court order, that the information contain in the pre-sentence was wrong.
- I. That the trial court committed " reversible Error " where the trial court gave court appoint counsel Liotta, the transcript, to review while counsel was call as a witness over the Petitioner " Objection."
- J. Petitioner was deprive of a Fair and ~~Just~~ Just Hearing, on October 5, 1976, where trial counsel Liotta, Knowing committed Perjury under Oath.

3/ cont.....

April 21, 1977, the D.C. Court of Appeals, " Granted " appellate counsel Francis S. Smith, motion to withdraw, and represent the Hanafi Muslin, in the Lower Superior Court. Here the D.C. Court of Appeals, was more interested in the Lower court case then the Petitioner Case, that was before the D.C. Court of Appeals, a periord of Six (6)... month had pass, " no " brief was file, here the court let counsel Smith, withdraw from the petitioner case without following the direction... setforth in ANDER V. CALIRORIA, 368 U.S. 738, when counsel Smith, was granted leave to withdraw from the petitioners case.

The record will show that on May 18, 1977, the Petitioner, while at the Lorton Reformatory Va. recieved a letter from another Appellate Counsel Joel Du Boff, in this letter appellate counsel Du Boff, infomed the Petitioner that counsel had been appointed by the D.C. Court of Appeals, to represent Petitioner on Direct Appeal, Counsel Du Boff, also informed the Petitioner that counsel had recieved transcripts of September 1, 1976 and October 5, 1976, court proceeding and that Appellate Counsel Smith, had inform (him) that the Petitioner had additional transcript of importance... see Exbition (C) Attach..

June 13, 1977, the record will show that while the Petitioner was at Lorton Reformatory Va, by letter informed Appellate Counsel Du Boff, that the Petitioner " WANTED " an " INTERVIEW " before Appellate Counsel Du Boff, " STARTED " on the Petitioner Direct Appeal Brief, attach to this letter was copies of the issues Petitioner wanted to remained counsel Du Boff, of what Appellate Counsel Smith, had informed the Petitioner as to the additional issues to be raised on Direct Appeal, to support the Petitioner claims of ineffective assistance of counsel, by the court appointed trial counsel Robert Case Liotta.

4 / cont.....

Petitioner requested that Appellate Counsel, to investigate these issue, also in this letter the petitioner informed Appellate counsel that the trial had started ordering the petitioner to the Psychological Testing, that was order before the petitioner had been sentence..see Exbition (D) Attach..

July 18, 1977, the record will show that while the Petitioner was at Lorton Reformatory Va, by letter informed the Appellate Counsel Joel DuBoff, that the Petitioner " did " not have any " FUNDS " to send the transcripts by " Certify Mail " again the Petitioner request- ed an interview form Appellate Counsel Joel DuBoff, see Exbition (E),. Attach.. (Petitioner recieve " no " reply nor did Appellate Counsel Joel DuBoff, used the resouses inwhich The CRIMINAL JUST- ICE ACT FUND, was provided for. Petitioner again informed Appellate Counsel that the trial court had deprive the Petitioner of due process, where the court was continually order the Petitioner to Mental and Psychological, because the Petitioner mental competence should have been resolve before the petitioner was sentence.

From May 18, 1977, thur August of 1977, did Appellate Counsel, make any effords to interview the Petitioner or obtain the transcript the Petitioner had in his possession nor use the resouses inwhich the CRIMINAL JUSTICE ACT FUND was derected.

Aggust 18, 1977, the Petitioner was informed by Mr. Hugh E. Kline, Chief Deputy Clerk, of the D.C. Court of Appeals, that appellate Counsel DuBoff, had file an Appeal Brief, and that the goverment's Brief had beed filed. see Exbition (F) Attach

August 23, 1977, the Petitioner by " Certify Mail " informed Appellate Counsel Joel DuBoff, that the Petitioner was " Depress " to learned from Mr. Hugh Kline, Clerk, of the D.C. Court of Appeals, that Counsel had file an Appeal Bbrief, without interviewing the Petitioner or obtaining the transcript of the Petitioner Court Proceeding, also Petitioner informed Appellate Counsel Joel Du Boff, that the Petitioner " HAD NOT RECIVED A COPY OF THE BRIEF, " file by Appellate Cunsel..... see Exbition (G) Attach...A periord of of ten month had pass since the Notice of Appeal had been docket in the D.C. Court of Appeals.

5 / cont.....

It might be noted that this letter was sent by Certified Mail... Number 300765, this letter was received and signed by the Appellate Counsel Joel Duboff, the petitioner was at Lorton Reformatory Va, see.. Exbition (H) Attach..

August 27, 1977, the Petitioner received a copy of the Brief file by counsel Duboff, " NONE " of the issue the Petitioner had requested Appellate Counsel to investigate and present on Direct Appeal was found to support the Petitioner claim of ineffective assistance of counsel by trial counsel Robert Case Loitta, none of the issue contain on page 3, in this petition was found..etc. Appellate Counsel Duboff, abandon these issue on Direct Appeal.

August 31, 1977, the record will show that the Petitioner forward a letter to Mr. Hugh E. Kline, Clerk of the D.C. Court of Appeals, informing the Clerk of the Petitioner " Desire " to file a Supplement Brief, to bring to the D.C. Court of Appeals " Attention " the issues that was abandon from the brief file by Appellate Counsel DuBoff, see Exbition (I) Attach

It might be noted that the Petitioner also informed the Clerk, of Court, " That if these issue was not presented on Direct Appeal, the Petitioner would lose his rights to file any motion thereafter. A letter was also sent to Appellate Counsel DuBoff..

NOTE... Here the Petitioner file a timely letter to the D.C. Court of Appeals on August 31, 1977 see Exbition (I) to put the D.C. Court of Appeals on " Notice " that Appellate Counsel had not interview the petitioner, and had abandon issue that was known to Appellate Counsel on Direct Appeal and that the Petitioner " DESIRE " to file a Supplement Brief.

September 13, 1977, Petitioner received a letter from Mr. Hugh E. Kline, Chief Deputy Clerk of the D.C. Court of Appeals.... see Exbition (J)..Attach

NOTE.. Here the Petitioner was informed that it was not the practice of the D.C. Court of appeal, for the petitioner to file a pro-se Supplement Brief. Here the Petitioner was cut off by the court, and personnel from presenting the abandon issue contain on page 3, in this petition, in support of the petitioner's claims of ineffective assistance of counsel by the trial court appointed counsel Robert Case Loitta. It is clearly manifest that the issue contain on page 3, constitutes ineffective assistance of counsel.

The record will show that on December 8, 1977, Appellate Counsel Joel Duboff, agreed the brief file by counsel. The issue requested by the Petitioner was abandon. This brief agreed by Appellate Counsel DuBoff, was presented " Wrong " and did not contain sufficient information to support the petitioner's claims of ineffective assistance of counsel by the trial Counsel Robert Case Loitta, further the issue contain on page 3, would have call for a " Reversal ".

The record will show that on December 21, 1977, the D.C. Court of Appeals " affirmed " the brief file by Appellate Counsel DuBoff, without a " Opinion "... NO SUPPLEMENT BRIEF WAS FILED .

NOTE... The petitioner was not aware of these proceeding due to Appellate Counsel Joel DuBoff, has not talk to the Petitioner nor communicated with the Petitioner by any means. Nor did Appellate Counsel Joel DuBoff, inform the Petitioner of his rights to Petition for a Writ of Certiorari.

NOTE... The letter forward to Appellate Counsel Joel Duboff, by Mr. Hugh E. Kline, was also disregarded by Appellate Counsel.

March 16, 1978, their correspondence with the clerk's office D.C. Court of Appeals, the petitioner learn that the brief file by Appellate Counsel DuBoff, had been Affirmed. At " NO " time did Appellate Counsel Joel DuBoff, inform the Petitioner of (his) rights to Petition for a Writ of Certiorari.

The record will show that on March, 30, 1978, without any knowledge of the right to Petition for a Writ of Certiorari, by Pro-Se file an En Banc Motion to the D.C. Court of Appeals, informing the Court of Appeals of the Appellate Counsel DuBoff action.

It appears that the Petitioner's En Banc Motion was denied on July 8, 1978, it was not until April 2, 1979, their document forward to the petitioner from the D.C. Court of Appeals Clerk's Office, was the Petitioner aware that the motion for rehearing EnBanc was denied.

NOTE... the record will show that at no time did the Clerk's Office inform the Petitioner that the Motion for rehearing EN Banc, was denied.

Appellate Counsel Joel DuBoff, to this day has never Communicate with the Petitioner by any means.

AUGUMENT

PETITIONER WAS DEPRIVE OF EFFECTIVE ASSISTANCE OF COUNSEL ON DIRECT APPEAL, WHERE APPELLATE COUNSEL FAIL TO INTERVIEW THE PETITIONER NOR MADE ANY EFFORDS TO OBTAIN THE TRANSCRIPT OF THE PETITIONER COURT... PROCEEDING INWHICH THE PETITIONER HAD IN (HIS) PROSESSION.

Where the Petitioner while at the Lorton Reformatory Va, on June 13, 1977, forward a letter " Requesting " an interview before Appellate Counsel Joel DuBoff, started on the Petitioner Direct Appeal Brief, so that Appellate Counsel could go over the issues the Petitioner had forward to Appellate Counsel, the failure of Appellate Counsel not interviewing the Petitioner " after " the Petitioner " REQUESTED " the interview deprive the Petitioner of effective assistance of counsel on Direct Appeal.. see ANDER V. CALIFORNIA, 368 U.S. 738, 18 Led. 2d. 496 (1967) .. also see Exbition (D) attach.

Where the Petitioner " AGAIN " on July 18, 1977, by letter seeked an interview from Appellate Counsel Joel DuBoff, the Failure of Appellate Counsel not interviewing Petitioner after the Sencond (2nd) " Request " deprive the Petitioner of effective assistance of Counsel on Direct Appeal, " DUE PROCESS " required the court appointed Appellate Counsel Joel DuBoff, to interview the Petitioner at least one (1) time.... ANDER V. CALIFORNIA, 368 U.S. 738, 18 L.ed. 2d. 498... see Exbition (E) Attach.

Where the Petitioner while incarcerated in the Lorton Reformatory Va, on July 18, 1977, informed Appellate Counsel DuBoff, that the Petitioner " DID NOT HAVE ANY FUNDS TO SEND THE TRANSCRIPT BY CERTIFY MAIL " and where Appellate Counsel " KNOWING " the important of these transcripts made " no " efford to obtain the transcript, where the Appellate Counsel Joel DuBoff, had the resouses to interview and obtain the transcript by the resouses provide by the Criminal Justice Act Fund, deprive the Petitioner of a Fair and Just review on Direct Appeal and ineffective assisstance of counsel.. 5th and 6th Amend.

NOTE..... This Honorable Court, must reconize that appellate counsel claim that counsel has obtain transcript of September 1, 1976 and October 5, 1976, court proceeding. These Transcript was not significant enough to present the issue contain on Page 3, in this Petition.

8 / cont.....

Further this Honorable court must review the Court proceeding held on October 5, 1976, where the trial court admitted that the September 1, 1976, transcript was in complete see page 4 (TR. 25).. and Page 5 (TR. 1-5).

THE COURT: I did not have the transcript of the cross examination done. Cross-Examinatio, " OF COURSE IS SIGNIFICANT " but I thought that the most significant matter as it might relate to Mr. Liotta, would be his direct examination.

Here Appellate Counsel file a brief without obtaining the Full Transcript of the September 1, 1976, court proceeding. Appellate Counsel Joel DuBoff, was not the Petitioner trial counsel.

Where the Petitioner on June of 1977 and July of 1977, informed Appellate Counsel Joel DuBoff, that the Psycholocial Testing Order by the trial court before the petitioner was sentence was not carried out, and the trial court, had started ordering the Psycholocial Testing and Mental Testing after sentencing the petitioner to incarceration was and Direct Appeal issue insupport of ineffective assistance of counsel by trial counsel Robert Case Liotta, see page 3, section (D)

The failure of Appellate Counsel DuBoff, not investigating as to WHY? the trial court did not provide these test after order these test prior to the Petitioner sentence or inquiring as to " WHAT ? " was the " RESULTS " of the E.E.G. TEST; HEAD X-RAYS and PSYCHOCIAL TESTING? or " WHY ? " was these test not enter in to the court " RECORD " as the Law required.

Appellate Counsel Joel DuBoff, made no efford to investigate these above issue mention. The said issue was Direct Appeal, issue known to Appellate Counsel.

It is clearly manifest that the issue contain on page 3, in this petition could not be found only in the September 1, 1976 and October 5, 1976, court proceeding. Counsel knew that the petitioner had other transprit of importance but fail to obtain them.

This failue to obtain the transcript deprive the Petitioner of effective assistance of counsel on Direct Appeal. 9 / cont.....

NOTE..... APPELLATE COUNSEL JOEL DUBOFF, WAS NOT THE PETITIONER TRIAL COUNSEL.

2. PETITIONER WAS DEPRIVE OF EFFECTIVE ASSISTANCE OF COUNSEL ON DIRECT APPEAL WHERE APPELLATE COUNSEL " WILLFULLY ABANDON " ISSUE " KNOWN " TO COUNSEL.

Where the petitioner while incarcerated at the Lorton Reformatory Va, on June 13, 1977, forward a out line of Direct Appeal issue contain on page (3), in this petition, the failure of Appellate Counsel to investigate the above issue deprive the petitioner of the direction setforth by the 5th;6th Amendment; A.B.A. Standard, Code of Professional Responsibility.. see ANDER V. CALIFORNIA, 386 U.S. 738, 18 L.ed.2d. 1433, DOUGLAS V. CALIFORNIA, 372 U.S. 353, 9 L.ed.2d 811 (1967), and GRIFFIN V. ILLNORIS, 351 U.S. 12 (1956).. also see Rule 44, of the Superior Court Criminal Rules.

The said Appeal issue contain in the outline supported the issue of ineffect-ive assistance of Counsel, by trail counsel Robert Case Liotta.

The issue contain on page (3) in this petition was Direct Appeal issue, the said Petitioner " Requested " Appellate Counsel Joel Duboff, to investigate was abandon from the Petitioner's Direct Appeal Brief, thus depriving the Petition-er of effective assistance of counsel on Direct Appeal.. ANDERS V. CALIFORNIA, 368 U.S. 738 (1963); DOUGLAS V. CALIFORNIA, 372 U.S. 353 and GRIFFIN V. ILLINOIS, 351 U.S. 12 (1956).

The petitioner asserts that the Petitioner is " BARRED " by Law from seeking Post-Conviction Relief, as to the issue contain on page (3), in this petition due to Appellate Counsel abandon the said issue on Direct Appeal, these issue should have been properly investigated and counsel DuBoff, should have informed the Petitioner of the " MERITS " of the issue.. ANDER V. CALIFORNIA, 18 L.ed.2d. at page 1433 (1967); DOUGLAS V. CALIFORNIA, 9 L.ed.2d. 811.

As a matter of " COMITY " Appellate Counsel Joel DuBoff, should have interv-iewed the Petitioner at least one (1) time... see DOUGLAS V. CALIFORNIA, 372 U.S. 353 and ANDERS V. CALIFORNIA, 368 U.S. 738.

10 /cont.....

The record will show that Appellate Counsel Joel DuBoff, nor Appellate Counsel Francis S. Smith, was the Petitioner trial counsel.

The record will show that there wasn't any excuse for Court Appointed Appellate Counsel Joel DuBoff, not interviewing the Petitioner or obtaining the transcript the Petitioner had in his possession. The Petitioner was at all times housed at the Lorton Reformatory, just out-side of the District of Columbia.

Further there were " PROCEDURE AND RESOURCES " available inwhich Appellate Counsel could have used, to bring the Petitioner to the Superior Court, or the D.C. Jail or Appellate Counsel Joel Duboff, could have come down to Lorton Reformatory Va, for an interview and obtain the transcripts the Petitioner had in his possession.. See Criminal Justice Act Fund. " Due Process" required Appell-ate Counsel to interview the Petitioner at least one (1) time.

Court Appointed Appellate Counsel Joel DuBoff, failure to use the resouse available, under the Criminal Justice Act, thus deprive the Petitioner of effect-ive assistance of counsel on Direct Appeal,, 5th and 6th Amendment. Appellate Counsel Joel DuBoff, was not the Petitioner trial counsel.

3. PETITIONER WAS DEPRIVE OF EFFECTIVE ASSISTANCE OF COUNSEL, ON DIRECT APPEAL, WHERE APPELLATE COUNSEL JOEL DUBOFF, FAIL TO PROVIDE THE PETITIONER WITH A TIMELY COPY OF THE APPEAL BRIEF, THUS DEPRIVING THE PETITIONER OF A CHANCE TO PROCEED BY PRO-SE OR PROPRIA-PERSONA.

The record will show from the time Appellate Counsel Joel DuBoff, was appointed by the D.C. Court of Appeals, March of 1977, at " NO " time did counsel Joel DuBoff, go over the petitioner Appeal issue that was setforth in the brief file by Appellate Counsel Joel DuBoff, nor did Counsel Joel DuBoff, go over the issues setforth on page (3), in this petition nor did Appellate counsel follow the Direction setforth in ANDERS V CALIFORNIA, 18 L.ed.2d. 493 (1967), this Honorable U.S. Supreme Court of the United States held in ANDERS at page 498.... (6 - 7) that,

A COPY OF COUNSEL'S BRIEF SHOULD BE FURNISHED TO THE INDIGENT AND TIME ALLOWED HIM TO RAISE ANY POINTS THAT HE CHOOSES; THE COURT - NOT COUNSEL THEN PROCEEDS, AFTER A FULL EXAMINATION OF ALL THE PROCEEDING, TO DECIDE WHEATHER THE CASE IS WHOLLY FRIVOLOUS.

11 / cont.....

see also Mr Justice Stewart, whom Justice Black and Mr Justice Harlan... join (Dissenting) page 499 ANDERS:

We believe that the requirement of the Douglas Case, 372 U.S. 353, 9 L.ed2. 811, is met..when, as in this case, counsel is appointed to represent the defendant on Appeal; thoroughly studies the record " CONSULTS " with the defendant and trial counsel and conscientiously concludes that there are no meritorious.. grounds of Appeal.

The record will show as of this date, the Court Appoint Appellate Counsel Joel DuBoff, has never communicated with the Petitioner by any means.

It was not until August 18, 1977, until the Petitioner was informed by Mr. Hugh E. Kline, Chief Deputy Clerk, D.C. Court of Appeals, that Appellate counsel Joel DuBoff, had filed and Appeal Brief. At no time during the Petitioner Appeal proceeding, did Counsel DuBoff, Communicate with the Petitioner by any means.

The record will show that the Petitioner did not receive a copy of the Brief file by Appellate Counsel DuBoff, until August 27, 1977, thereafter the Petitioner sought assistance from the D.C. Court of Appeals and Personal.

It might be noted that when the Petitioner was informed by Mr. Hugh E. Kline, Chief Deputy Clerk, D.C. Court of Appeals the government brief had already been filed.. see Exhibition (F)... Attach.

Court Appointed Appellate Counsel Joel DuBoff, deprive the Petitioner of the direction set forth in ANDERS V. CALIFORNIA, 368 U.S. 738, 18 L.ed2. 498 (1967), where the Petitioner was not provided with a timely copy of the Direct Appeal Brief.. 5th and 6th Amend.. Criminal Law .. Key 46 (5).. see ANDER, at page 498 and DOUGLAS V. CALIFORNIA, 372 U.S. 353, 9 L.ed.2d. 811.

Here the Petitioner was cut off from presenting the issue contain on page (3), in this petition. It was not the Petitioner fault that the issue was abundant. It is clearly manifest that the Petitioner " PUT THE D.C. COURT OF APPEALS ON " NOTICE " OF THE PETITIONER'S " DESIRE " to file a " SUPPLEMENT BRIEF " ..see Exhibition (I) Attach. (The Petitioner was denied a chance to proceed by Pro-se or Propria Persona.)

§ 12 /cont.....

Court Appoint Appellate Counsel Joel DuBoff, was ineffective where Appellate Counsel, fail to handle the Petitioner case with the diligence to which the petitioner being indigent was entitled.

4. PETITIONER WAS DEPRIVE OF EFFECTIVE ASSISTANCE OF COUNSEL ON DIRECT APPEAL, WHERE APPELLATE COUNSEL " WILLFULLY " REFUSE TO FILE A " SUPPLEMENTAL BRIEF " AFTER IT WAS BROUGHT TO APPELLATE COUNSEL " ATTENTION " BY " REQUEST " OF THE PETITIONER AND MR. HUGH E. KLINE, CHIEF DEPUTY CLERK, AUTHORIZE PERSONNEL OF THE D.C. COURT OF APPEALS.

The Petitioner asserts and the record supports that, Court Appointed Appellate Counsel Joel DuBoff, " WILLFULLY REFUSE " to file a " SUPPLEMENT BRIEF " in the Petitioner's behalf..DOUGLAS V. CALIFORNIA, 372 U.S. 353, 9 L.ed2. 811 (1967) and GRIFFIN V ILLINOIS, 351 U.S. 12 (1956).

The record will show that after the Petitioner received the letter from Mr. Hugh Kline, Chief Deputy Clerk, D.C. Court of Appeals, date August 18, 1977, see Exhibition (F) Attach. Petitioner on August 23, 1977, by Certified Mail, requested a copy of the Brief, from Appellate Counsel Joel DuBoff, after the Petitioner received a copy of the Brief, and found the issues Petitioner " REQUESTED " counsel to investigate had been abandon, the Petitioner on August 31, 1977, forward a letter to Appellate Counsel Joel DuBoff and Mr. Hugh E. Kline, informing the above names of the Petitioner " DESIRE " to file a SUPPLEMENT BRIEF, to bring to the D.C. Court of Appeals, " ATTENTION " the issue that was abandon by Appellate Counsel Joel DuBoff, see Exhibition (I) Attach.

The record will " SHOW " that on September 13, 1977, Petitioner received a letter from Mr Hugh Kline... see Exhibition (J) Attach, the fact of record will show that Court Appointed Appellate Counsel Joel DuBoff, " NEVER " made a respond to the Petitioner'S letter nor the letter from Mr. Hugh E Kline, Chief Deputy Clerk, for the D.C. Court of Appeals. Appellate Counsel action was contrary to the A.B.A. STANDARD, CODE OF PROFESSIONAL RESPONSIBILITY. " NO SUPPLEMENT BRIEF " was file in the Petitioner behalf.

13/ cont.....

This Honorable Court, must review Exhibition (H) Attach, a sign " CERTIFY MAIL RECIEPT " by Appellate Counsel Joel DuBoff, the Petitioner was at all times at the Lorton Reformatory Va, further the Petitioner Institutional Record will show that the Petitioner was incarcerated at the Lorton Reformatory Va, from November 16, 1976, thur November 18, 1977.

Court Appointed Appellate Counsel Joel DuBoff, " Willfully " " REFUSE " to file a " SUPPLEMENT BRIEF " to bring to the D.C. Court of Appeals " ATTENTION " the abandon issue, deprive the Petitioner of effective Assistance of Counsel and a Fair and Just Hearing on Direct Appeal.. ANDERS V. CALIFORNIA, 372 U.S. 738 18 Led2. 493, 498, DOUGLAS V. CALIFORNIA, 372 U.S. 353 and GRIFFIN V. ILLINORIS, 351 U.S. 12 (1956)....A.B.A. STANDARD, CODE OF PROFESSIONAL RESPONSIBILITY.

This Honorable Court, has setforth standards in ANDERS, further this Honorable Court, has " Ruled " that,

"IT IS FOR THE APPELLATE COURT TO " DECIDE " THE " MERITS " " NOT " COURT APPOINTED APPELLATE COUNSEL...see ANDERS, cited at page 498 and 1433. The issue contain on page 3, in this petition was Direct Appeal issues which would have call for an " REVERSAL."

This Honorable Court, must reconize that the issues in the Brief file by Court Appointed Counsel Joel DuBoff, was present " Wrong " and not support by the issues contain on page 3; 17 and 20 in this petition

NOTE..... THIS HONORABLE COURT MUST RECONIZE THAT THE PETITIONER PUT THE D.C. COURT OF APPEALS AND PERSONNEL ON " NOTICE " OF THE PETITIONER " DESIRE " TO FILE A SUPPLEMENT BRIEF... SEE... EXBITION (I) ATTACH.

5. THE DISTRICT OF COLUMBIA COURT OF APPEALS AND PERSONNEL FAIL TO ASSIST THE PETITIONER IN FILING A SUPPLEMENT BRIEF, THUS DEPRIVING THE PETITIONER OF A FAIR AND JUST REVIEW ON DIRECT APPEAL.

This Honorable Court, must reconize that the D.C. Cort of Appeals and Personnel, fail to assist or allow the Petitioner to file a " SUPPLEMENT BRIEF " nor investigate " WHY " Appellate Counsel Joel DuBoff, had abandon issue " Requested " by the Petitioner to be present ed in the Direct Appeal Brief, or provided the Petitioner " AMBER " time inwhich to file a PRO-SE Supplement Brief...see ANDER, at 498...

16 / cont.....

Case Law has been establish by the Supreme Court, of the United States, in ANDERS V. CALIFORNIA, 18 Led2. 493, there the Court ruled that, " if " Appellate Counsel, found no merits in the Appeal, counsel could file a motion to withdraw, the court also set guildlines require for counsel to follow in proceeding to withdraw.

The court also held that:

The Appellant, shold be granted " AMBER TIME " inwhich to proceed by " PRO-SE " or Propria-Persona, the court further held that, " It is the Appellate Court, to decided the " Merit " not Court Appointed Appellate Counsel ".... ANDERS, cite at 498 (6-7) and 1433.

In the case at barr, the petitioner timely informed the D.C. Court of Appeals, that Appellate Counsel Joel DuBoff, had abandon issue that was requested by the Petitiöner to be presented on Direct Appeal and the Petitioner " DESIRE " to file a Supplement Brief.... see Exhibition (I) Attach.

Where the Petitioner was informed by Mr. Hugh E. Kline, Chief Deputy Clerk, of the D.C. Court of Appeals, on September 13, 1977, that the Petitioner could not file a Supplement Brief, by Pro-se and where after Appellate Counsel DuBoff, was informed timely of the Petitioner " Desire " to file a supplement brief, and refuse to file the said Brief, the Petitioner was cut off from presenting the issue contain on page 3; 17 in this petition, by the D.C. Court of Appeals and its Personnel.

The Petitioner has been deprive of Due Process by the D.C. Court of Appeals and its Personnel, a periord of almost 2 years has past since the Petitioner brought to the D.C. Court of Appeals " ATTENTION " the Petitioner " Desire " to file a Supplement Brief, the D.C. Court of Appeals and its Personnel fail to follow the direction setfourth in ANDERS, cited at page 498 (6-7), thus depriving the Petitioner of " Due Process ", the issue contain on page 3 and 17 in this petition, would have call for a " REVERSAL ". The Petitioner being indigent has been pre-judice by the action of the D.C. Court of Appeals and its Personnel.

The court without " Assisting " the Petitioner in filling a " Suppement Brief " or causing Appellate Counsel Joel DuBoff, to file the said Supplement Brief, is contray to the direction setforth in ANDERS, page 498 (6-7).

The record will show that when Appellate Counsel Joel DuBoff, aurge the brief, file by Appellate Counsel, the D.C. Court of Appeals, was on " NOTICE " that Appellate Counsel DuBoff, had abandon issues and that " NO " Supplement Brief, had been file.

15 /

Petitioner being indigent was deprive of assistance from the D.C. Court of Appeals and its Personnel... DOUGLAS V. CALIFORNIA, 372 U.S. 353 9 Led2. 811 and Griffin V. Illinois, 351 U.S. 12.

To cause the Petitioner to return to the D.C. Court of Appeals, for review will offend " Due Process ", the D.C. Court of Appeals, had time to assist the Petitioner at the stage of the Direct Appeal, further the Court was aware of Appellate Counsel Joel DuBoff, had abandon issues, and that the Petitioner had seek the assist of the court in filing a Supplemant Brief. The D.C. Court of Appeals, and Personel fail to Protcet, the Petitioner's Constitution Rights.

The fact of records show that the Petitioner has been deprive of effective assistance of counsel in the trial court as well as the Appellate Court.

The D.C. Court of Appeals, has decide the " Merits " that was contain in the Appellate Counsel Brief, and the Goverment has made a respond to the brief, this Honorable Court must reconize that the brief file by Appellate Counsel Joel DuBoff, was decided wrong by the panel which heard the aurgrement by Appellate Counsel, this Honorable Court must reconize that the issue contain on page 3 and 7 in this petition was abandon.

It is Manifest that the panel of the D.C. Court of Appeals " AFFIRM " the brief enter by Appellate Counsel Joel DuBoff, this court must reconize " WHAT? " would have been the " OUT COME " of the court raling " IF " Appellate Counsel Joel DuBoff, had properly presented the issues contain on page 3 and 7 in this petition or file the Supplement Brief.

This Honorable Court, must reconize that the Petitioner was deprive of effective assistance of counsel, where Appellate Counsel Joel DuBoff, agured the brief, " Knowing " that the Petitioner had " Requested " a Skpplement Brief " to be file.

6. PETITIONER WAS DEPRIVE OF EFFECTIVE ASSISTANCE OF COUNSEL ON DIRECT APPEAL, WHERE APPELLATE COUNSEL JOEL DUBOFF, FAIL TO INFORM THE PETITIONER OF THE RIGHT TO PETITION FOR A WRIT OF CERTIORIA.

The fact of record will show that from the time Court Appointed Counsel Joel DuBoff, was appointed by the D.C. Court of Appeals, March of 1977, " UNTIL " the

present date, has Appellate Counsel Joel DuBoff, " COMMICATED " with the Petitioner by " ANY MEANS "

This failure to communicate with the Petitioner or inform the Petitioner of the right to Petition for a Writ of Certioria, constitutes ineffective assistance of counsel, 5th and 6th Amerment and Rule 44, of the Superior Court and Federal Rule of Criminal Procedure.

Case Law has been establish by this Honorable Supreme Court of the United Satets, in DOHERTY V. UNITED STATES, 404 U.S. 149 (1971) (PER CURIAM); SCHERINER V. UNITED STATES, 404 U.S. 404 U.S. 67, 30 L.ED2. 222 (1971) (PER CURIAM) and HERBERT G. WILKINS V. UNITED STATES, (Supreme Court # 78-5885), as to an Appellate Counsel, duty to inform a defendant of his right to Petitioner for a Writ of Certioria, and that the defendant has a statutory right to assistance of counsel in preparing a Petition... SCHEREINER V. UNITED STATES, supra at 67. (at " no " time since Appellate Counsel Joel DuBoff, was appointed by the D.C. Court of Appeals, on March of 1977, has Appellate Counsel communicated with the Petitioner by any means.)

7. PETITIONER ALFORD PLEA, MUST BE " REVERSED " AS A MATTER OF " DUE PROCESS " AND DUE TO THE PETITIONER HAS BEEN DEPRIVE OF THE SAME RIGHTS TO RELIEF AND REMEDIES AFFORED TO HENRY ALFORD AND DUE TO THE TRIAL COURT FAIL TO FOLLOW THE DIRECTION SETFORTH BELOW:

Due to Court Appointed Appellate Counsel Joel DuBoff, failure to obtain the transcripts of the Plea Proceeding held on March 30, 1976, and investigate the issue of the violation of Rule 11, deprive the Petitioner of effective assistance of counsel, on Direct Appeal, where the rule 11, violation was brought to Appellate Counsel " Attention " timely by letters and the " Request " by the Petitioner to present the said issue abandon in a suppelment brief.

The Voilation of Rule 11, was an Direct Appeal issue. The violation of Rule 11, itself would have call for an " REVERSAL " if present properly on Direct Appeal, it was clearly Manifest in the Plea Proceeding Transcript, March 30, 1976, that the voilation accured. Appellate Counsel Joel DuBoff, failure to review the Plea transcript, abandon the Voilation of Rule 11, from the Petitioner's Direct Appeal Brief.

This Honorable Court, mast turn to Plea Proceeding held on March 30, 1976, the transcript will show that at no time did the trial court, inform the Petitioner of the Significance of the Alford Deceision as Rule 11, requires. The Petitioner Alford Plea was enter involuntary.

This Honorable Court, must recognize that the Petitioner is " BARRED " by Law, from seeking the Rule 11, violation and the other isunse contain in this Petition as to Post - Conviction Relief, where these said issues " SHOULD " have been presented on Direct Appeal.

This Honorable Court, must recognize that the Defendant Alford, seeked Post-Conviction Relief, and was granted a Post-Conviction Hearing, pursuant to N.C. GEN. STAT. 15-217 and 15-222 (1965), " DUE PROCESS " required the Petitioner the same rights afforded to Henery Alford.

8. PETITIONER'S ALFORD PLEA, MUST BE REVERSED AS A MATTER OF DUE PROCESS WHERE TRIAL COUNSEL ROBERT CASE LIOTTA, FAIL TO INFORM THE PETITIONER OF THE DISCUSSION WITH THE PROSECUTOR AS TO A PLEA BARGAIN.

The fact of record will show that on September 5, 1975, Court Appointed counsel and the Prosecutor held a long conference, in this confernce a plea proposal was made by the prosecutor...see transcript date september 1, 1976, page 13, (tr. 8 - 10).

THE PROSECUTOR: Well, I want you to answer my question, though, Did not Mr. Liotta, write you while you were in Hagerstown for the District of Columbia District Court Offence and " EXPLAIN " his " DISCUSSION " with the prosecutor.

THE DEFENDANT: NO HE DIDN'TCont.. to page 14 (TR. 8 - 20)

THE Prosecutor: And did he in this letter sir, not tell you what the " GOVERNMENT'S PLEA OFFER TO YOU WAS AT THAT TIME. "

The Petitioner was never informed of the government plea offer until this offer had been terminated.

The facts of record will show that on September 8, 1975, Court Appointed Counsel Robert Case Liotta, forward a letter to Maryland State Pentientiary, Hagerstown Maryland... see transcript date October 5, 1976, page 20 (TR. 16-25),

COUNSEL LIOTTA: Yes that was a problem. I mailed the letter, let's see, in September of 1975, to the Maryland State Penitentiary in Hagerstown, where he was supposed to have been at that time. And that was the mix up that had happened. He had been released by mistake I of course, didn't know it. The letter was return to me. As Mr. Corley says in his transcript he said I handed him the copy of the letter in court. That's

18 / cont.....

probably correct. I can't say the date I handed it

to him, but it was sometime after that when he was apprehended on a bench.. cont to page 21, (TR 1-25) warrant, I believe, that I handed him the letter, I would guess a couple of months, but I'm not certain of the day.

The fact of record will show that Court Appoint Counsel Liotta, never presented the letter until the government plea offer had been terminated. Here the petitioner was deprive of a chance to plea to the governments frist (1st) plea offer.

The fact of record will show that the Petitioner plea offer extented from a second (2nd) plea offer from the government a more harsser penities that the frist (1st) offer, which was lesser counts.

Here the Petitioner was deprive of Pleaing to the frist (1st) lesser counts, due to ineffective assistance of counsel.

The above issue was a Direct Appeal issue in support of ineffective assistance of counsel by the trial counsel Robert Case Liotta, alone would have call for a Reversal.

This Honorable Supreme Court of the United States must recognize the STANDARD RELATING TO THE PROSECUTOR AND DEFENSE FUNCTION, approved draft (1971) as authorized by the AMERICAN BAR ASSOCIATION A.B.A. PROJECT ON STANDARD FOR CRIMINAL JUSTICE INCLUDE on page 249, the following instruction for defense counsel:

6.2 CONDUCT DECUSSION

A. In conducting discussion with the prosecutor the lawyer should keep the accused advised of developments at all times and all proposal made by the prosecutor should be communicated promptly to accused.

The commentary to the passage just quoted certain the following statement with which the court concurs.

It is important that the accused be informed of proposal made by the Prosecutor, the accused not the lawyer, has the right to pass on prosecutor proposal... A.B.A. 5.2, even when a proposal is not one which the lawyer would not approve. It the accused choice on the question of a guilty plea is to be an informed one, he must act with full awareness of his alternative, including any that arise from proposals made by the Prosecutor.

A.B.A. PROJECT ON STANDARD FOR CRIMINAL JUSTICE: STANDARD RELATING TO PROSECUTOR FUNCTION AND THE DEFENCE FUNCTION, APPROVED DRAFT, 1971, at page 250.

The obligation to communicate offers is extremely important. Both the Prosecutor and defense counsel normally prefer to discuss plea possibilities outside the defendant's presence.

19 / cont.....

Accordingly, the defendant cannot ascertain the status or availability of such possibilities unless his counsel keep him currently informed. Defense counsel has a duty to communicate to his client not only the term of a plea bargain offer, but also the relative merits of the offer compared to the defendant's chance at trial...see, e.g. A.B.A. Project on Standard for Criminal Justice Standard Relating to the defense Function.. (approved Draft 1971) The Defense Function.. 5.1, A.B.A. Project on standard for Criminal Justice Standard Relating to Plea of Guilty.... approved draft.. (1968) 3.2.... see also AMSTERDAM, SEGAL and MILLER, Trial Manual for the Defense of Criminal case 1967 at 2-143....see Mc Mann v. Richardson, 397 U.S. 759 (1970) as proper standard for determining the effectiveness of counsel.

Here the Petitioner was deprived of any significance or option available, due to trial counsel Robert Case Loitta, failure to communicate the government's First (1st) Plea Offer.

There was no excuse for trial counsel to " THINK " the Petitioner was at the Maryland State Penitentiary Hagerstown Maryland, where counsel " KNEW " that the Petitioner was at Washington County Hagerstown Maryland, see transcript of June 27, 1975, court proceeding.

Petitioner was deprived of a chance to plea to the government's first (1st) Plea Offer due to " NEGLIGENCE " and " IGNORANCE ", which constitutes ineffective assistance of counsel, 5th and 6th Amendment.

This Honorable Court, must recognize that from the time Trial Counsel Robert Case Loitta, was appointed on February of 1975, it was not until March of 1976, Before trial counsel, communicated with the petitioner.. (A period of Thirteen (13) Months. The above issue was Direct Appeal issues in support of the Petitioner's claims of ineffective assistance of counsel, by the trial counsel Robert Case Loitta, this issue would have called for " Reversal ".

Appellate Counsel Joel DuBoff, failure to interview the Petitioner or obtain the transcripts of the Petitioner's court proceeding, and failure to present the above issue in the Brief or file the Supplement Brief, at the Petitioner's " REQUEST " deprived the Petitioner of effective assistance of counsel on Direct Appeal.

20 /cont.....

This Honorable Court, must recognize that the Petitioner being indigent has been deprived of effective assistance of counsel, in the trial court and on Direct Appeal.

This Honorable court must recognize that, the Petitioner Plea under the Alford Plea was involuntary.

CONCLUSION

The petitioner prays that this Honorable Court, will first consider the fact that the Petitioner was deprived of effective assistance of counsel, on Direct Appeal.

The Petitioner prays that this Honorable Court will cause an investigation as to " WHY? " Court Appointed Appellate Counsel Joel DuBoff, fail to interview the Petitioner or obtain the transcripts the Petitioner had in his possession. (APPELLATE COUNSEL WAS NOT THE PETITIONER'S TRIAL COUNSEL.)

The Petitioner prays that this Honorable Court, will investigate as to " WHY? " Court Appointed Counsel Joel Deboff, abandon the issues contain on pages 3, 17, 18, 19 and 20 in this Petition?

Petitioner prays that this Honorable Court, will investigate as to " WHY? " APPELLATE COUNSEL Joel DUBOFF, fail to file a " SUPPLEMENT BRIEF " at the request of the Petitioner and letter forward to Appellate Counsel DuBoff, by Mr. Hugh E. KLINE, Chief Deputy Clerk, D.C. Court of Appeals.

The Petitioner prays that this Honorable Court, will investigate as to " WHY? " the D.C. Court of Appeals, fail to assist the Petitioner when it was timely brought to the D.C. Court of Appeals " attention " that the Petitioner " DESIRE " to file a Supplement Brief.

Petitioner prays that this Honorable Court, will investigate as to " WHY " Court Appointed Appellate Counsel, fail to inform the Petitioner of his rights to Petition for a Writ of Certiora, or assist the Petitioner in preparing the Petition.

To cause the Petitioner to go back to the D.C. Court of Appeals, for review, will " Offend DUE PROCESS ", where the D.C. Court of Appeals was put on timely " NOTICE " of the Petitioner " Desire " to file a Supplement Brief, the D.C. Court of Appeals, itself has deprived the Petitioner of a Fair and Just Hearing. A period of almost 2 years has passed since the Petitioner put the D.C. Court of Appeals, on notice of the Petitioner's desire to file a Supplement Brief. DUSKY V. UNITED STATES, 4 L.ED2. 824.

For the foregoing reason Petitioner requests that this Court Reverse his conviction and let the Petitioner Plea a New.

RESPECTFULLY SUBMITTED

Roger H. Corley
ROGER H. CORLEY PRO-SE

SUPREME COURT of the
UNITED STATES
WASHINGTON D.C. 20543

JUN 25 1979

OFFICE OF THE CLERK
SUPREME COURT, U.S.

ROGER H. CORLEY
40945
P.O. Box. 1000
Lewisburg Pa. 17837

PET. NO. 78 - 6840

. V .

UNITED STATES of AMERICA

AMENDMENT TO THE PETITION FOR A
WRIT OF CERTIORI

Comes now the Petitioner Roger H. Corley, by pro-se Respectfully and in Goodfaith prays that this Honorable Supreme Court of the United States, will add this said Amendment to the Petitioner, Original Petition for a Writ of Certiorari. Reason for such asking is as follow.

The fact of record will show that on June 19, 1979, " After " the Petitioner, Petition for a writ of certiorari, was file in this Honorable Court, the Petitioner recieved a copy of the En Banc Motion, file in the D.C. Court of Appeals, on March 30, 1978, from the Clerk's Office D.C. Court of Appeals, contain on Page 9, in the En Banc Motion, the record will show that the D.C. Court of Appeals, was " INFORMED " by the Petitioner " THAT ", court appointed Appellate Counsel Joel DuBoff, had not informed the Petitioner of the Right to Petitioner for a Writ of Certiorari, " HERE " along with the other issues contain in the Original Petition, " SHOWS " that the D.C. Court of Appeals, was " AWARE " of the Appellate Counsel Joel DuBoff, action when the D.C. Court of Appeals " DENIED " the Petitioner En Banc Motion... see page 9, of the Motion file on March 30, 1978.

It was the D.C. Court of Appeals, duty " AFTER " being put on " NOTICE " that Appellate Counsel Joel DuBoff, had fail to inform the Petitioner of his right to Petition for a Writ of Certiorari, to vacate the judgement and assist the Petitioner in filling the said Petition for a Writ of Certiorari.. DOHERTY V UNITED STATES, 404 US. 28 and SHCHREINER V. UNITED STATES, 404 U.S. 67.

To cause the Petitioner to return to the D.C. Court of Appeals, " WHERE " the D.C. Court of Appeals, " HAD ALREADY BEEN PUT ON NOTICE " that Appellate Counsel Joel DuBoff, had fail to inform the Petitioner of his rights to Petition for a Writ of Certiorari, is contrary to the ruling of the Honorable Court.

A period of Sixteen (16) month has pass since the D.C. Court of Appeals was put on " NOTICE " that Appellate Counsel Joel DuBoff, had fail to inform the Petitioner of his rights to Petition for a Writ of Certiorari.. see En Banc Motion file on March 30, 1978, page (9).

It might be noted that the " WHOLE COURT " deprive the Petitioner of Petitioner's Constitutional and Statutory Rights to Petition for a Writ of Certiorari.

It might be noted after it was brought to the court " ATTENTION ", the D.C. Court of Appeals, fail to cause an investigation as to " WHY " Appellate Counsel, fail to inform the petitioner of the said right to Petition for a Writ of Certiorari, this action by the D.C. Court of Appeals, is contrary to the Constitution and Laws of the United States.

Wherefore, for the issues contain in the Original Petition and issue contain herein, the Petitioner prays that this Honorable Court, will Vacate the Petitioner Conviction a let the Petitioner Plea a New.

Respectfully Submitted

Roger H. Corley
ROGER H. CORLEY, PRO-SE
40945
P.O. BOX. 1000
Lewisburg Pa. 17837

6-20-79

CERTIFICATE OF SERVICE

SOLICITOR GENERAL, of the
UNITED STATES
DEPARTMENT of JUSTICE
WASHINGTON, D.C. 20530

CLERK'S OFFICE
SUPREME COURT of the
UNITED STATES
WASHINGTON D.C. 20543

I *Roger H. Corley* Hereby Certify that service of the foregoing Amendment to the Petition for a Writ of Certiorari... Number 78-6840, has been forward to the above names, by the means of Postal Paid Mail, paid by the Department of Justice, Bureau of Prison, this 20th Day of June 1979.

Roger H. Corley

DISTRIBUTED
AUG 31 1979

Can Q
No. 78-6840

RECEIVED

AUG 31 1979

OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1978

ROGER H. CORLEY, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE
DISTRICT OF COLUMBIA COURT OF APPEALS

MEMORANDUM FOR THE UNITED STATES

WADE H. MCCREE, JR.
Solicitor General
Department of Justice
Washington, D.C. 20530

ORIGINAL COPY

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1978

No. 78-6840

ROGER H. CORLEY, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE
DISTRICT OF COLUMBIA COURT OF APPEALS

MEMORANDUM FOR THE UNITED STATES

Petitioner asserts that he was denied effective assistance of counsel on appeal of his convictions to the District of Columbia Court of Appeals and that he was not informed of his right to petition for a writ of certiorari to this Court.

On March 30, 1976, petitioner pleaded guilty in the Superior Court for the District of Columbia to two counts of armed rape, in violation of 22 D.C. Code 2801 and 3202, and one count of armed kidnapping, in violation of 22 D.C. Code 2101 and 3202. The pleas were submitted under the doctrine of North Carolina v. Alford, 400 U.S. 25 (1970). In exchange for his guilty plea, the government agreed to dismiss 51 remaining counts against petitioner. Prior to sentencing, petitioner filed a pro se motion to withdraw his guilty plea, and four days later petitioner's attorney requested leave to withdraw as appointed counsel. Counsel's request was granted, and on

- 2 -

June 22, 1976, another attorney was appointed to represent petitioner.

On September 1 and October 5, 1976, a hearing was held in the Superior Court on petitioner's motion to withdraw his plea. At that time petitioner testified that his first attorney had failed to consult with him for any significant amount of time, inform him of the possible sentencing consequences, or arrange for a private psychiatric examination as promised (Sept. 1 Tr. 3-26). The attorney testified, however, that he had consulted at length with petitioner on three separate days and had informed petitioner that he could receive three consecutive life sentences (Oct. 5 Tr. 12-18, 20, 26). Following the hearing the court denied petitioner's motion to withdraw his plea, finding that petitioner had failed to establish any reason for its withdrawal (Oct. 5 Tr. 36). Petitioner was then sentenced to consecutive terms of 15 years to life imprisonment on each rape count and 10 years to life imprisonment on the kidnapping count.

On appeal, counsel for petitioner argued that petitioner was deprived of effective assistance of counsel in connection with his plea by the failure of counsel to ensure that petitioner understood the consequences of his plea, to discuss the possible sentence fully, and to obtain a psychiatric examination for petitioner. Counsel also argued that the trial court erred in not allowing petitioner to withdraw his plea because he did not understand its consequences. The District of Columbia Court of Appeals affirmed petitioner's conviction on December 21, 1977, holding that the district court did not abuse its discretion in denying petitioner's motion to withdraw his guilty plea (Pet. App. A).

On March 30, 1978, petitioner filed a pro se petition for rehearing en banc, asserting that he had been denied effective

assistance of counsel on appeal because counsel had failed to raise a number of issues petitioner wanted to present to the court of appeals. The petition for rehearing was denied on July 8, 1978 (Pet. App. B).^{1/}

In his pro se petition to this Court, filed more than 11 months after denial of his untimely petition for rehearing in the court of appeals, petitioner argues (Pet. 1, 2, 7, 16-17) that appellate counsel did not inform him that his conviction had been affirmed or of his right to petition for a writ of certiorari. Implicit in the latter contention, and in the fact of his filing a pro se petition in this Court, is the further contention that petitioner was not afforded the assistance of counsel in preparing his petition. Petitioner's appellate counsel has informed us, however, that he sent a letter to petitioner on January 5, 1978, at the Lewisburg, Pennsylvania address that is also set forth on petitioner's pro se petition to this Court, informing him of the decision by the panel of the court of appeals. Counsel also informs us that he wrote petitioner again on January 11, 1978, informing him of his right to petition for rehearing or for a writ of certiorari and that counsel's authority to represent petitioner had terminated, and suggesting that petitioner seek the assistance of counsel in the Lewisburg area if he wished to petition for rehearing or for a writ of certiorari.

Thus, although there appears to be an unresolved factual question whether petitioner was informed that his conviction had been affirmed by the court of appeals and that he had a right to petition for a writ of certiorari, it appears to be

^{1/} Petitioner states (Pet. 7) that he did not learn until August 2, 1978, through correspondence with the clerk's office at the court of appeals, that the petition for rehearing en banc had been denied. The order denying rehearing en banc (Pet. App. B) indicates, however, that a copy was sent to petitioner at the District of Columbia Jail.

undisputed that petitioner was not offered the assistance of appointed counsel under the District of Columbia Criminal Justice Act in preparing his petition for rehearing in the court of appeals or for a writ of certiorari.

The Court held in Wilkins v. United States, No. 78-5885 (April 30, 1979), that an indigent person convicted in federal district court has a right under the Criminal Justice Act, 18 U.S.C. 3000A, to the assistance of counsel in filing a petition for a writ of certiorari to this Court. See also Doherty v. United States, 404 U.S. 28 (1971); Schreiner v. United States, 404 U.S. 67 (1971). The Criminal Justice Act does not apply to the Superior Court of the District of Columbia or the District of Columbia Court of Appeals. 18 U.S.C. 3000A(1).

In the District of Columbia Criminal Justice Act, Pub. L. No. 93-412, Congress has expressly provided for the appointment of counsel to assist indigents charged with criminal offenses in the Superior Court and on appeal in the District of Columbia Court of Appeals. D.C. Code 11-2604. It is not clear on the face of that Act whether appointment of counsel is also contemplated to assist in the preparation of a petition for a writ of certiorari to this Court. Although D.C. Code 11-2604(b) and (c) refer only to payment for representation in the Superior Court and the Court of Appeals, Section 11-2603 provides that a person for whom counsel is appointed "shall be represented at every stage of the proceedings from his initial appearance before the court through appeals, including ancillary matters appropriate to the proceeding" (compare 18 U.S.C. 3006A(c)), and Section 11-2604(d) contemplates payment for representation "other than before the Superior Court or the District of Columbia Court of Appeals." Moreover, we have been informed by the Office of the Clerk of the District of Columbia Court of Appeals that appointed

counsel have in the past been reimbursed under the District of Columbia Criminal Justice Act for the preparation of a petition for a writ of certiorari.

Although petitioner's certiorari petition is substantially out of time under Rule 22(2) of the Rules of this Court, we suggest that the Court may wish to grant the petition, vacate the judgment of the court of appeals, and remand the case to the court of appeals for appropriate proceedings, including a determination whether the District of Columbia Criminal Justice Act confers a statutory right to the assistance of counsel in filing a petition for a writ of certiorari, a determination whether petitioner was offered the assistance of counsel, entry of judgment reaffirming petitioner's conviction, and the possible appointment of counsel to assist petitioner in preparing a timely petition for a writ of certiorari. Wilkins v. United States, supra.

In view of this recommended disposition, we do not address petitioner's argument in his pro se petition that he was denied the effective assistance of counsel on appeal to the court of appeals.

It is therefore respectfully submitted that the petition should be granted and the case remanded in accordance with the suggestions made in this memorandum.

WADE H. McCREE, JR.
Solicitor General

AUGUST 1979